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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,640	01/30/2002	Andrew D. Bicek	S63.2-10015	5385
490	7590	05/02/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			PRONE, CHRISTOPHER D	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/058,640
Filing Date: January 30, 2002
Appellant(s): BICEK ET AL.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

Boston Scientific Scimed Inc.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/18/05 appealing from the Office action mailed 9/10/04.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 U.S.C. 103 (a) rejection of claims 18-22 over United States Patent 6,019,789 Dinh in view of United States Patent 5,935,162 Dang.

Excluding claims 18-22, described above, the appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

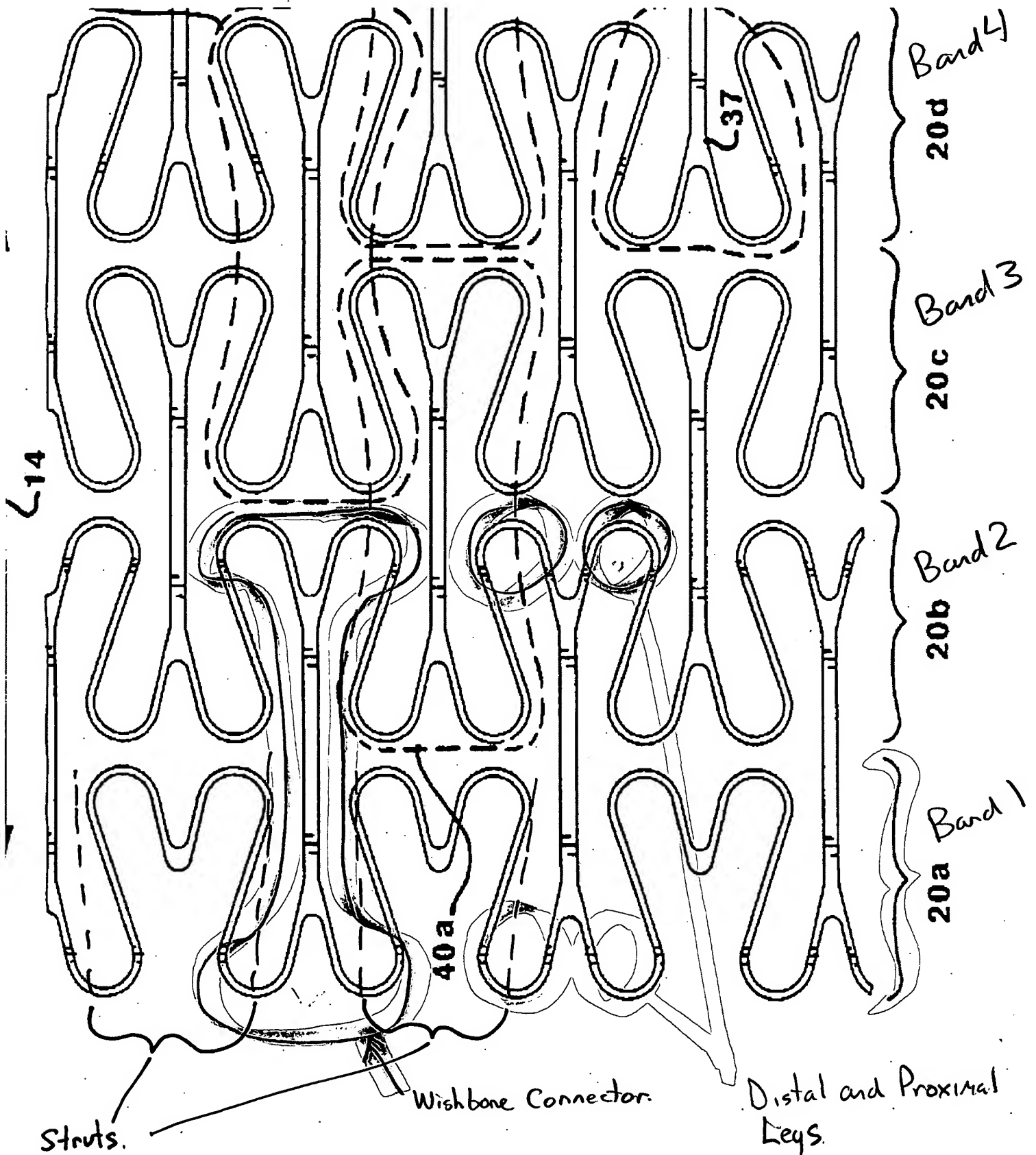
The following ground(s) of rejection are applicable to the appealed claims:

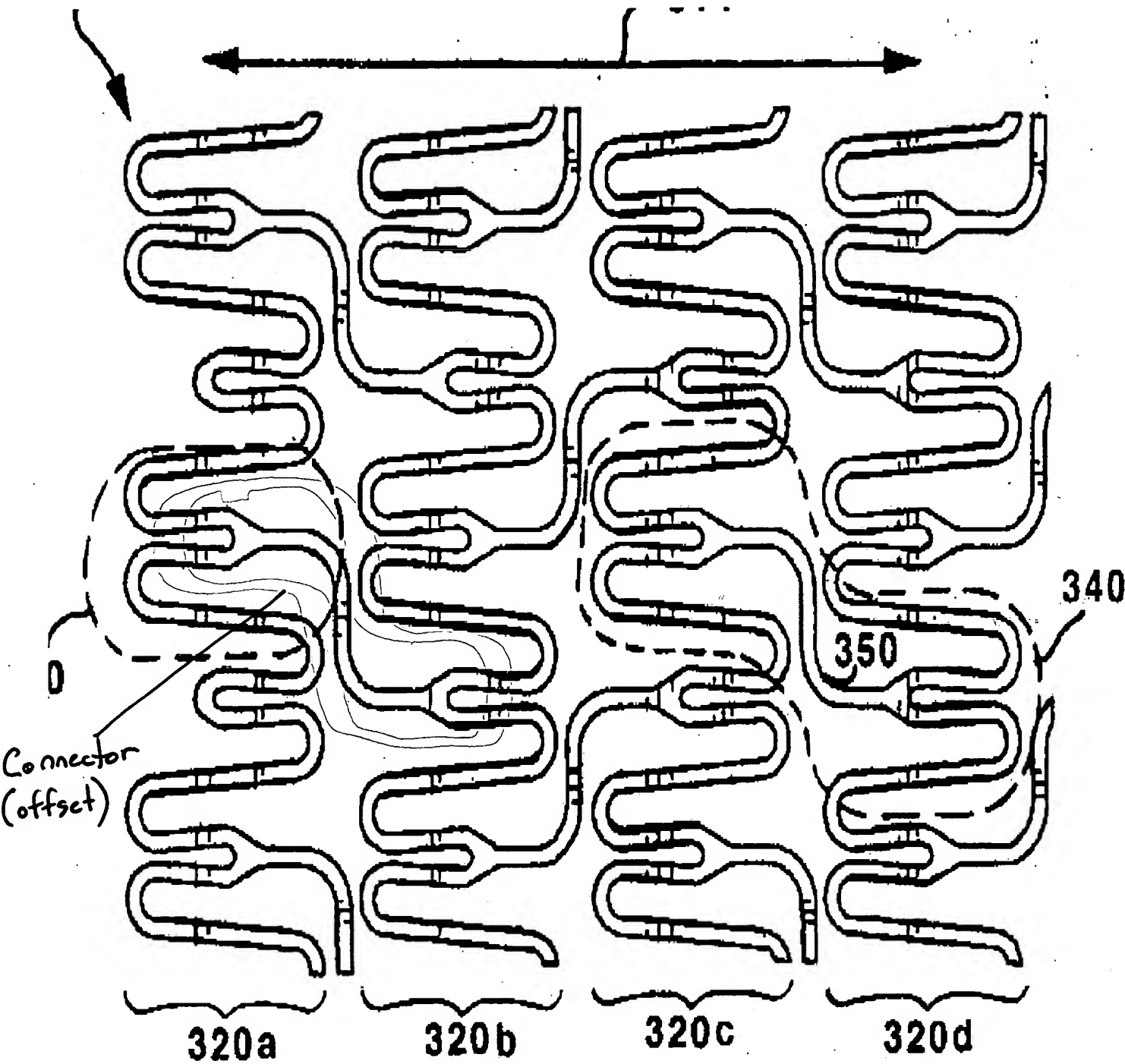
Claims 1,2,4,5,10,11, 13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dang (USPN 5,935,162).

With reference to Figures 2 and 7, Dang discloses a stent 10 having a proximal end and a distal end, the stent 10 comprises a plurality of axially spaced serpentine bands 20(a-e). The bands are formed by a plurality of struts having substantially the same length and are connected by a plurality of wishbone connectors 350 all shown in

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the figures included below. The serpentine band comprises a plurality of peaks and troughs longitudinally aligned with one another. The wishbone connectors have a central elongated portion, distal and proximal ends, which each have two legs extending therefrom. Each leg of the wishbone connector extends from a location on a serpentine band between a peak and trough. The proximal ends are circumferentially and longitudinally displaced from the distal ends. As shown in Figure 7, the elongate portions of the connectors have a plurality of turns and extend in a direction non-parallel to the longitudinal axis of the stent.





Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dang in view of Dinh et al (USPN 6,019,789).

As discussed above, Dang discloses the stent as claimed. However Dang fails to disclose the ratio of peaks and troughs to the number of connectors as well as the width of the connectors.

With reference to Figures 5b and 6b, Dinh teaches a stent 160 having plurality of serpentine bands 162 connected by a plurality of wishbone connectors 166, the serpentine bands 162 comprising alternating peaks and troughs, the number of peaks in the stent being twice the number of wishbone connectors 166. Dinh also teaches that the width of the serpentine bands 162 is greater than that of the wishbone connectors 166 to create a stent having selectively variable radial rigidity and longitudinal flexibility. Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the stent disclosed by Dang to incorporate the features taught by Dinh to produce a stent that provides variable rigidity and longitudinal flexibility.

(10) Response to Argument

Regarding Independent Claim 1 and Those Claims Dependent

Therefrom

The applicant argues that independent claim 1's recitation of "consists of" requires that the serpentine bands are made up of only interconnected struts of substantially the same length. This is not convincing because the recitation of the word "consisting" follows the broader term "comprising" in line 1. The applicant is giving too much weight to the use of the word consisting. In the current situation the recitation of consisting only requires that there is a plurality of struts, meaning more than 1. In the claims current form it does not limit the serpentine bands to be made solely of struts of substantially the same length. Therefore, as disclosed above Dang discloses a stent meeting all the claimed structural requirements.

The applicant further argues that Dang fails to include wishbone connectors with elongated portion that do not overlap longitudinally with either of the two serpentine bands. This is not convincing because each figure of Dang clearly shows this. Again the applicant is giving too much weight to the claim language. The term overlap is considered to mean, "to cover a part of." There are no components disclosed by Dang that are covered by another part.

The applicant goes on to state several arguments about the advisory action from December 17, 2004. All of the claimed structure is shown in the elected species pertaining to figures 5 and 6 of the current application.

**Regarding Independent Claim 10 and Those Claims Dependent
Therefrom**

The applicant continues to argue that the stent of Dang discloses bands that are overlapped by the elongated portion of the connector. As described above this is not the case because no elements shown in Dang cover or overlap each other.

The applicant further argues that Dang fails to disclose an elongated member with legs that are circumferentially and longitudinally offset. However as clearly shown in figure 7 of Dang the elongated member has legs that are both circumferentially and longitudinally offset.

The applicant further argues that Dang fails to disclose serpentine connectors and wishbone connectors having all the features required in claim 10. The applicant goes on to describe several situations where he believes that Dang does not disclose all the elements by switching around parts. The problem is that claim 10 requires serpentine bands (elements 320 a-c) having peaks and troughs connected by wishbone shaped connectors, but it does not require that the connector cannot be part of the serpentine bands. Therefore the stent disclosed by Dang clearly discloses all the claimed structural requirements.

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**Regarding Claims 8, 9, and 17 Rejected under 35 U.S.C. 103(a) Over
Dang in View of Dinh**

The applicant argues that the combination of Dang in view of Dinh fails to teach all the element of their independent claim. However as described above this is not true. Therefore claims 8, 9, and 17 remain rejected.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


 4/24/06
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Conferees:

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